HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1051 of 2006

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Between:

The Deputy Commissioner of Proh. & Excise,
Karimnagar, A.P., and two others

……Appellants

And

J.Kailasam

……Respondent

:: JUDGMENT ::

Counsel for the Appellants : Government Pleader for Prohibition and Excise

Counsel for the Respondent : Shri B.Ravinder for Shri K.M.Mahender Reddy

November 02, 2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 07-12-2005 passed by the learned Single Judge in Writ Petition No.16389 of 2005.

Shri B.Ravinder, learned counsel appearing for Shri K.M.Mahender Reddy requests for an adjournment by saying that Shri Reddy has not been able to come to the Court due to personal reasons.

Ordinarily, we would have accepted the request of the learned counsel and adjourned the case, but keeping in view the fact that the order impugned in this appeal has already been set aside by the Division Bench in Writ Appeal No.781 of 2006 decided on 21-07-2006, we do not consider it proper to adjourn the case.

A perusal of the record shows that by the order under challenge, the learned Single Judge allowed Writ Petition Nos.16379 and 16389 of 2005 and quashed the confiscation of Black Jaggery, which was being transported by the petitioners for manufacture of I.D. liquor at Burugupalli Thanda, Jaipur Mandal, Adilabad District. While doing so, the learned Single Judge relied on the judgment of another learned Single Judge in **Ulli Bhaskar v. State of A.P.**[1]. On appeal, the Division Bench reversed the order of the learned Single Judge and held that the action of the respondents to confiscate the Black Jaggery was legally correct. The Division Bench referred to the provisions of Sections 13, 34, 45 and 46 of the Andhra Pradesh Excise Act, 1968, the judgment of the Full Bench in **Ganesh Traders v. District Collector, Karimnagar**[2] and observed:

> "An analysis of the provisions reproduced above makes

it clear that manufacture of an intoxicant except under the authority and subject to the terms and conditions of a licence granted by the competent authority is prohibited (Section 13). A person who violates this provision is liable to be convicted and punished (Section 34). Clause (e) of Section 34 declares that whatsoever uses, keeps or has in his possession any materials, stills, utensils, implements or apparatus whatsoever for the purpose of manufacturing any intoxicant other than toddy can be proceeded against and punished. Sections 45 (1) provides for confiscation of any intoxicant, materials, stills, utensils, implements or apparatus in respect of or by means of which any offence has been committed under the Act. Section 45 (2) provides for confiscation of any intoxicant lawfully imported, transported, or manufactured and Section 45 (3) provides for confiscation of any receptacle, package or covering in which anything liable to confiscation under sub-sections (1) and (2) is found. Section 46 (1), which begins with a non-obstante clause, empowers the Deputy Commissioner of Prohibition and Excise to order confiscation of the property which is subject matter of offence."

The Division Bench then referred to the judgment of the Single Bench in **Ulli Bhaskar v. State of A.P.** (supra) and disapproved the same by making the following observations:

"With great respect to the learned Single Judge, we are unable to approve his interpretation of Section 34 (e) because a wholesome reading of Section 34 (e) shows that the Legislature has designedly made the actual manufacture as well as possession of any materials for the purpose of manufacturing any intoxicant without licence punishable. In other words, if a person is found in possession of any material intended to be used for manufacture of an intoxicant and he does not have the requisite licence, then he can be proceeded under Section 34 read with Sections 45 and 46. It is thus clear that if a person contravenes the provisions of the 1968 Act or of any rule made thereunder, and possesses any material which is intended to be used for the purpose of

> manufacturing any intoxicant, he can be proceeded against on the ground of violation of Section 34 (e). If the interpretation placed by the learned Single Judge on the plain language of Section 34 (e) is accepted, then Section 34 (e) will become otiose and redundant. Therefore, keeping in view the well recognized rule of interpretation that the Court should avoid an interpretation which may lead to surplusage or render a statutory provision redundant, we disapprove the view expressed by the learned Single Judge in **Ulli Bhaskar v. State of A.P**., (supra)."

The Division Bench expressed the view that the learned Single Judge was not justified in ignoring the law laid down by the majority of the Full Bench in **Ganesh Traders v. District Collector, Karimnagar** (supra).

Since the present appeal is directed against the order of the learned Single Judge, which already stands set aside, the same is allowed.

The detailed reasons recorded in order dated 21-07-2006 passed in Writ Appeal No.781 of 2006 shall be read as part of this order.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

02-11-2006

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[1] 2004 ALT (Crl.)(2) 30

[2] 2002 (1) ALT 611